

STATE OF MICHIGAN
COURT OF APPEALS

DARREN F. FORD,

Plaintiff-Appellee,

V

EDYTHE M. FORD,

Defendant-Appellant.

UNPUBLISHED

April 20, 2004

No. 245720

Wayne Circuit Court

LC No. 01-129276 DM

Before: Cooper, P.J., and Griffin and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right from an amended judgment of divorce. We affirm.

Defendant's first issue on appeal is that the trial court committed error in determining that the parties had established a joint custodial environment for their minor child and awarding joint physical and legal custody of the minor child to plaintiff and defendant. We disagree.

Factual findings, such as the existence of an established custodial environment, are reviewed under the great weight of the evidence standard. A trial court's findings should be affirmed unless the evidence clearly preponderates in the opposite direction. *Phillips v Jordan*, 241 Mich App 17, 20; 614 NW2d 183 (2000). "To whom custody is granted is a discretionary dispositional ruling. . . . a custody award should be affirmed unless it is an abuse of discretion." *Fletcher v Fletcher*, 447 Mich 871, 880; 526 NW2d 889 (1994). See also MCL 722.28.

In any child custody dispute, a trial court must first determine whether an established custodial environment exists. *LaFleche v Ybarra*, 242 Mich App 692, 695-696; 619 NW2d 738 (2000). If an established custodial environment exists, the court may not change custody unless there is clear and convincing evidence that it is in the best interest of the child. *Id.* 696. Whether an established custodial environment exists is a question of fact, which the trial court must address before it determines a child's best interest. *Mogle v Scriver*, 241 Mich App 192, 197; 614 NW2d 696 (2000).

Prior to initiation of the divorce action, plaintiff asserted he was involved daily in the minor child's care. While the divorce action was pending, the parties were awarded joint physical and legal custody of the minor child. Given the established custodial environment with both parents, the status quo must be maintained unless clear and convincing evidence exists that

the child's best interests necessitate a change to custody with just one parent. *Foskett v Foskett*, 247 Mich App 1, 6-7; 634 NW2d 363 (2001).

Following its determination of the existence of a joint custodial environment, the trial court properly proceeded to review the best interest factors to determine an award of custody. *LaFleche, supra* at 696. "[T]he statutory best interest factors need not be given equal weight. Neither a trial court in making a child custody decision nor this Court in reviewing such a decision must mathematically assess equal weight to each of the statutory factors." *McCain v McCain*, 229 Mich App 123, 131; 580 NW2d 485 (1998). Based on the testimony and evidence presented at trial, it cannot be said that the trial court's findings of fact on the best interest factors pertaining to domestic violence and the ability of the parties to facilitate a close relationship for the minor child with the other parent were contrary to the great weight of the evidence. A trial court's findings of fact should be affirmed unless the evidence clearly preponderated in the opposite direction. An appellate court should defer to the trial court's findings on issues of credibility. *Mogle, supra* at 201. On review of the record, the trial court's findings of fact were not against the great weight of the evidence, as the court determined the allegations of domestic violence were rooted in the inability of the parties to continue to reside together and would be resolved by conclusion of the divorce proceedings. Further, as the court determined both parties equally "dysfunctional" regarding their ability to promote a close relationship between the minor child and the other parent, the court concluded the solution to the problem was not to favor either parent, but rather, to assure both parties equal and continuing access to the child in order to maintain the child's relationship with both parents.

Defendant's second issue on appeal is that the trial court erred in failing to compensate her for personal property allegedly damaged by plaintiff. We disagree.

An appellate court must first review the factual findings of the trial court for clear error regarding property division in a divorce judgment. If the findings of the trial court are not clearly erroneous, the appellate court must determine whether the dispositional ruling was fair and equitable under the circumstances. *Sparks v Sparks*, 440 Mich 141, 160; 485 NW2d 893 (1992); *Olson v Olson*, 256 Mich App 619, 622; 671 NW2d 64 (2003), citing *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 NW2d 792 (1995).

Given the mutual allegations made by plaintiff and defendant and the even-handed refusal of the court to reimburse either party for personal property allegedly destroyed by the other, it does not appear that the trial court was inequitable in its determination to preclude compensation. Neither party presented substantive proof of their respective claims or verifiable valuations of the personal items allegedly destroyed. A property division is not required to be mathematically equal, *Welling v Welling*, 233 Mich App 708, 710; 592 NW2d 822 (1999), but should be fair under the circumstances of the case, *Byington v Byington*, 224 Mich App 103, 114-115; 568 NW2d 141 (1997). Given the lack of proofs submitted, coupled with the potential for defendant to receive compensation through an alternative means pending an investigation regarding the factual basis of her claim and the court's failure to award plaintiff compensation for his claims of personal property destruction by defendant, the court's distribution of property is fair and equitable.

Defendant's final issue on appeal seeks a remand of this matter to a different judge based on the potential for bias of the trial judge having developed preconceived ideas pertaining to the

parties. Because this Court is affirming the amended judgment of divorce, remand is unnecessary and this issue is moot.

Affirmed.

/s/ Jessica R. Cooper
/s/ Richard Allen Griffin
/s/ Stephen L. Borrello